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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/341,979 07/21/99 BODET

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EXAMINER

IM22/1124

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DEL COTTO, G ART UNIT	PAPER NUMBER
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1751
DATE MAILED:

11/24/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/341,979

Applicant(s)
Bodet et al

Examiner
Greg Del Cotto

Group Art Unit
1751



☒ Responsive to communication(s) filed on Oct 28, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-11 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-11 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☒ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. Claims 1-11 are pending.
2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Specification

3. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claim Objections

4. Claim 5 is objected to because of the following informalities:

With respect to claim 5, line 2, it is suggested that Applicant change "Magnesium" to "magnesium".

Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 6, 8, and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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7. A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, claims 6 and 8 recite the broad recitation "alkyoxo group" and "clear liquid", respectively, and the claims also recite "preferably ethoxy or propoxy, most preferably ethoxy" and "preferably in a transparent container", respectively, which is the narrower statement of the range/limitation.

8. Claim 11 provides for the use of the composition to improve the physical stability of a composition, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claim 11 is rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e.,

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results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was

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made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

Evaluations of the level of ordinary skill in the art requires consideration of such factors as various prior art approaches, types of problems encountered in the art, rapidity with which innovations are made, sophistication of technology involved, educational background of those actively working in the field, commercial success, and failure of others.

The "person having ordinary skill" in this art has the capability of understanding the scientific and engineering principles applicable to the claimed invention. The evidence of record including the references and/or the admissions are considered to reasonably reflect this level of skill.

11. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Naik (US 5,387,373).

Naik teaches a stable, aqueous detergent composition in liquid or gel form containing from 10 to 80% by weight of an active detergent mixture comprising primary alkyl sulphate in an amount of 15 to 75% by weight of the active detergent plus betaine and/or amine oxide in an amount of 10 to 40% by weight of the active detergent mixture. See abstract. Other anionic detergents may be included but for certain forms of the composition, the anionic detergent consists substantially of primary alkyl sulphate or primary alkyl sulphate with alkyl ether sulphate. See column 3, lines 1-11. Note that, with respect to the instant claims, Naik et al teach the use of Lialet 123-3S which is a C12 to C13 alkyl ether sulphate with an average of three ethylene oxide residues per molecule. See column 8, lines 40-55. Note that, Lialet 123 as taught by Naik et al is the same as the preferred ethoxylated alkyl sulfate as listed on page 5, lines 20-30 of the instant specification with about 60% branching. Note that, it would have been obvious to one of

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ordinary skill in the art to use ethoxylated alkyl sulfates with other branching as recited by instant claims 3 and 4, in the absence of a showing of unexpected or superior results, since the broad teaching of Naik et al encompass these types of branched surfactants. Note that, the solubilising cations of the ethoxylated alkyl sulfates include alkali metal ions and divalent ions such as magnesium ions which improve soft water performance. Manganese ions can also be incorporated as magnesium salt of inorganic magnesium salts or in the hydrotrope system. See column 4, lines 25-40.

With respect to instant claim 7, suitable amine oxides have the general formula as recited by instant claim 7. See column 5, lines 1-20. The stable liquid detergent compositions may be used for all normal detergent purposes especially where foaming is advantageous, for example, fabric washing products, general purpose domestic and industrial cleaning compositions, carpet shampoos, car wash products, personal washing products, shampoos, foam bath products, and above all, manual dishwashing.

Note that with respect to method claims 9 and 10, the only method steps recited are immersing the dishes in a diluted aqueous solution containing the composition as recited by instant claim 1, and contacting the surface of the dishes with an article containing the cleaning composition which is clearly suggested by Naik et al since the types of cleaning steps are conventional and Naik et al is primarily drawn to manual dishwashing compositions. Note that, with respect to instant claim 8, the Examiner asserts that the composition taught by Naik et al would have the same clarity as recited by the instant claims since Naik et al teach cleaning

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compositions containing the same components in the same proportions as recited by the instant claims. Additionally, it would have been obvious to one of ordinary skill in the art to package the cleaning composition taught by Naik et al in a transparent container since this type of packaging is conventional and notoriously well-known to those of ordinary skill in the art.

However, Naik et al do not specifically teach a cleaning composition or method of using such a composition to clean dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition and use such a composition in a method of cleaning dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims since the broad teaching of Naik et al suggest a cleaning composition and use such a composition in a method of cleaning dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims. Note that, disclosed examples and preferred embodiments do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); In re Fracalossi, 215 USPQ 569 (CCPA 1982). See MPEP 2123.

12. Claims 1-8 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Surutzidis et al (US 5,858,950).

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Surutzidis et al teach a liquid detergent composition containing a branched anionic surfactant. These compositions are low sudsing and have improved hydrophobic greasy soil removal performance. See Abstract. The compositions are characterized in that they comprise from 1% to 99% by weight of an anionic surfactant which is referred to as a Guerbet anionic surfactant; said anionic surfactants are low sudsing due to branching. The Guerbet anionic surfactant is typically present at levels from 1 to 70% by weight of the total detergent composition. See column 2, lines 15-48. Note that, Surutzidis et al specifically teach the use of a branched C12-C15 alkyl 3EO sulphate which is available under the tradename Lial C12-C15. Note that, this is the same as Lial surfactant listed on pages 5 and 6 of the instant specification.

Additionally, the compositions may contain 0% to 30% of nonionic surfactants. Semi-polar nonionic surfactant include water-soluble amine oxides containing one alkyl or hydroxy alkyl moiety of from about 8 to about 28 carbon atoms and two moieties selected from the group consisting of alkyl groups and hydroxy alkyl groups, containing from 1 to about 3 carbon atoms which can optionally be joined into ring structures. See column 4, lines 59-65. The detergent compositions may also contain non-Guerbet anionic surfactants in amounts from 1% to 40% by weight of the composition. The types of surfactants include alkyl alkoxyated sulphate surfactants containing a metal cation such as magnesium. See column 3, lines 10-35. The compositions can be formulated as conventional liquid detergent compositions or as an alternative, concentrated liquid detergent compositions. See column 6, lines 1-5.

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Note that, with respect to instant claim 8, the Examiner asserts that the composition taught by Surutzidis et al would have the same clarity as recited by the instant claims since Surutzidis et al teach cleaning compositions containing the same components in the same proportions as recited by the instant claims. Additionally, it would have been obvious to one of ordinary skill in the art to package the cleaning composition taught by Surutzidis et al in a transparent container since this type of packaging is conventional and notoriously well-known to those of ordinary skill in the art.

However, Surutzidis et al do not specifically teach a cleaning composition or method of using such a composition to clean dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate a cleaning composition and use such a composition in a method of cleaning dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims since the broad teaching of Surutzidis et al suggest a cleaning composition and use such a composition in a method of cleaning dishes containing a branched alkyl alkoxy sulphate surfactant, an amine oxide surfactant and water in the specific proportions as recited by the instant claims. Note that, disclosed examples and preferred embodiments to not constitute a teaching away from a broader disclosure or nonpreferred embodiments. In re Susi, 440 F.2d 442, 169 USPQ 423 (CCPA 1971); In re Fracalossi, 215 USPQ 569 (CCPA 1982). See MPEP 2123.

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Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Remaining references cited but not relied upon are considered to be cumulative to or less pertinent than those relied upon or discussed above.

14. Applicant is reminded that any evidence to be presented in accordance with 37 CFR 1.131 or 1.132 should be submitted before final rejection in order to be considered timely.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (703) 308-2519. The examiner can normally be reached on Monday thru Friday from 9:30AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta, can be reached on (703) 308-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3599.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

GRD
November 21, 1999

GREGORY R. DEL COTTO
Gregory R. Del Cotto
PATENT EXAMINER
ART UNIT 1751